No. 42.

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Brief of DuVal for Appellant.

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Filed Oct. 4, 1901.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

STATE OF ARKANSAS,..... *Appellant.*

vs.....No. 252.

KANSAS & TEXAS COAL COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,..... *Appellees.*

BEN T. DuVAL,
Of Counsel for Appellant.

IN THE

Supreme ~~CIRCUIT~~ COURT OF THE UNITED STATES.

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STATE OF ARKANSAS,..... *Appellant,*

vs.....No. 252.

KANSAS & TEXAS COAL COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,..... *Appellees.*

ABSTRACT

This action originated in the Circuit Court of Sebastian County for the Greenwood District, State of Arkansas, on the relation of Jo Johnson, prosecuting attorney, by a complaint in equity against the above named defendants on the 23rd day of April, 1899, in which it was alleged,

(2) That the defendant railway company is a corporation under the laws of the State of Missouri, and operating a railroad in the County of Sebastian, State of Arkansas.

(3) That the defendant coal company is also a corporation under the laws of the State of Missouri, and owns and

operates a coal mine at Huntington in the District and County aforesaid.

(4) That a high state of excitement and condition of hot blood prevailed between the striking miners and their sympathizers in large numbers on the one side, and the coal company and its employees on the other.

(5) That the said coal company is threatening, and is about to import into said county and town of Huntington over the line of their co-defendant's railroad a large number of armed men of the low and lawless type of humanity, to-wit: about two hundred, to the great danger of the public peace, morals and good health of the said county and more especially of said town.

(6) That said threatened action on the part of the defendants, if permitted, will become a great public nuisance, and would destroy the peace, morals and good health of said county and town and would lead to riot and bloodshed, and to the dissemination of contagious and infectious diseases.

(7) That said county and town of Huntington are now enjoying peace, health and good order, and your relator believes that the loss of human life and untold expense to the taxpayers of said county on account of probable violations of the criminal laws, can and should be prevented by the power of the law.

The prayer is: That the defendant coal company be restrained and prohibited from importing or causing to be imported or brought into the said county; and that defendant railroad company be enjoined and restrained and prohibited

from importing, hauling or bringing, or causing to be imported, hauled or brought into said county, and from unloading or attempting to unload from any of its cars, any and all large bodies of armed, lawless or riotous persons, affected with contagious or infectuous diseases that might injure the peace, good order of good health of the state, or create a public nuisance in said county.

On the same day the judge of said court issued a temporary order of injunction in conformity with the prayer of the complaint; and the clerk also issued a writ of summons which was served on the agents of the defendants corporations.

[Tr., pages, 1-2-3-4.]

In support of the complaint the affidavits of the following named persons were filed: George Simmons, W. W. McCracken, [Tr., p. 4] J. N. Ferguson, W. J. Cliff, A. J. Burke, Sol Lodge, William Bunch, O. T. Looper, Willie McKowen, Jake Pitchie, W. F. Williams, Geo. A. Hutchens, S. J. Jackson, J. N. Roberts, J. K. Davis, John Beggs and W. C. Hardester, and copies of telegrams from different parties. [Tr., pages, 5-6-7-8-9-10], Which tend to establish the allegations in the complaint.

On the 18th of July, 1899, the defendants filed a petition and bond for the removal of the cause to the Circuit Court of the United States in and for the Fort Smith Division of the Western District of Arkansas.

[Printed Tr., pages 10-11].

It is alleged in said petition that the controversy in said suit is wholly between citizens of different States and that the suit is one arising under the constitution and laws of the United States, in this, that the Coal Company is engaged in the business of mining coal in the State of Arkansas, transporting and

selling the same as a business in the States of Texas, Kansas and Missouri, and is thereby engaged in inter-state commerce; that the defendant Railway Company is a common carrier, engaged in carrying passengers and freight through several States and Territories, and is thereby engaged in inter state commerce; that the petitioners are instruments of inter-state commerce, etc.; that they have a defense to said suit arising under the United States, and therefore, although the State of Arkansas is a party, this cause is removable to the United States Circuit Court aforesaid.

(Printed Tr., pages 12-13].

The court denied the motion to remove. (See opinion of Judge Rowe).

[Printed Tr., pages 1-15-16].

The defendants, notwithstanding, filed a certified transcrip of the record, etc., in the office of the Clerk of the United States Circuit Court aforesaid, and on the 25th day of July, 1899, notified Jo Johnson, attorney for the complainants, that they had filed the transcript, and would on the 31st day of July, 1899, at 10 o'clock, move for a dissolution of the injunction, and at the same time and place, move for an injunction against the complainants from prosecuting this action any further in the Sebastian Circuit Court for the Greenwood District, as the same had been removed to the Circuit Court of the United States.

[Printed Tr., page 18.]

From page 18 of the printed transcript to page 62, inclusive, is contained the affidavit of Bennett Brown, on the part

of the defendants, taken before his Honor, Styles T. Rowe, Judge of the Circuit Court of Sebastian County for the Fort Smith District, of which it is unneccary to make a full abstract, as the court below did not take into consideration any testimony in the case, but based his decision wholly upon the law involved.

On the 31st day of July. 1899, defendants filed their answer to the complaint, denying the facts alleged therein, and alleging that the injunction granted pursuant to the prayer of the complaint, violated the laws of the United States, and the Fourteenth Amendment to the Constitution, and that it interferred with the Inter State Commerce of the United States.

[Printed Tr., pp. 63-64-65.]

On the same day defendants filed a motion restraining complainant from in any manner, form or way, prosecuting or continuing to prosecute said suit, or any contempt proceedings therein, or any other matters or things relating to same in the Sebastian Circuit Court for the Greenwood District. [Printed Tr., pp. 65-66.]

And on the same day filed a motion to dissolve the injunction granted by the State court.

[Printed Tr., pp. 67-68.]

On the 17th day of August, 1899, the plaintiff, by her attorney, moved to dismiss this cause and strike the same from the docket.

First: Because the petition for removal and the transcript show that it is not removable under the laws of the United States.

Second: Because the State of Arkansas being plaintiff, and the defendants citizens of the State of Missouri, the court could not acquire jurisdiction on the ground of diverse citizenship.

Third: Because the record shows that it is not a civil action for the enforcement of a right arising under the Constitution or the United States or treaties.

Fourth: Because the defendant railway company is a domestic corporation and subject to the jurisdiction of the courts of the plaintiff.

[Tr. p. 67.]

On the 9th day of August plaintiffs attorney filed a motion to postpone further examination and trial of the cause until there was a full bench of judges, for reasons therein set forth.

[Tr., p. 68.]

And on the same day filed a motion to postpone the cause until the plaintiff had time to get ready for trial.

[Tr., page 69.]

On the 14th day of September plaintiff filed a general replication to defendant's answer.

[Tr., page 70].

Transcript, pages from 70 to 98 inclusive, contain the testimony of W. L. Warner, Bennett Brown, F. E. Doubleday and Dan Hogan, taken on the part of defendants, which it is unnecessary to abstract, for reasons given above.

The Court took the several motions referred to under advisement, and on the 2nd day of September, 1899, overruled the plaintiff's motion to remand the cause to the State court,

and dissolved the injunction granted by the said State court on the 23d day of April, 1899, and overruled the defendant's motion to restrain the plaintiff from the further prosecution of this action in the State court.

[Tr., pages 121-122.]

The opinion of the Court deciding the several motions aforesaid is contained in the transcript, pages 98-117, inclusive.

On February 1st, 1900, this cause was heard upon the bill, answer, replication, evidence and stipulation of counsel. On consideration whereof the Court adjudged that the plaintiff's bill be dismissed, because said bill of complaint lacks equity, and does not state a cause of action; and that the evidence does not sustain the allegations of the bill.

To which finding and decree the plaintiff at the time excepted.

[Printed Tr., page 122.]

On the 20th day of February, 1900, plaintiff filed petition for appeal from said judgment to the Supreme Court of the United States, and at the same time filed an assignment of errors, as follows:

First. The Court erred in refusing to remand said cause to the Circuit Court of Sebastian county, and in taking jurisdiction over said cause, because under the constitution and laws of the United States this cause is not removable from the State Court to this Court.

Second. The Court erred in dissolving the injunction of the State Court.

Third. The Court erred in dismissing the plaintiff's bill of complaint for want of equity on its face, and because it does not state a cause of action.

Fourth. The Court erred in finding that the evidence did not sustain the allegations of the complaint.

Fifth. Because the Court erred in taking jurisdiction to hear and determine said cause, because under the constitution and laws of the United States the said Court had no jurisdiction over the same.

[Printed Tr., pages 118-119.]

Stipulation of counsel in regard to the testimony.

[Printed Tr., pages 119-120.]

The petition and prayer for appeal is granted by the Court.

[Printed Tr., page 122.]

BRIEF AND ARGUMENT.

It will be seen by the foregoing abstract of the pleadings and proceedings that the court below sustained the defendant's motion to dissolve the injunction granted by the State court. His reasons for this action are contained in an elaborate opinion, beginning on page 89 of the printed transcript and ending on page 117. The record entry is found on pages 121-122. The final judgment of the Court will be found on page 122. The assignment of errors will be found on pages 118-119 of the printed transcript.

The questions presented to this Court for decision are contained in the assignment of errors as above stated.

First—The Court Ought to have Remanded the Case to the State Court.

The Court below held that, in determining whether or not the case is a suit of a civil nature arising under the constitution and laws of the United States or treaties must be by an examination of the complaint itself.

Second—The Complaint Did State a Cause of Action.

The complaint states that a high state of excitement and hot blood prevailed between the striking miners, and their sympathizers on the one side, and the coal company and its employees on the other. That the coal company is threatening to import over its co-defendant's railroad large numbers of armed men of the low and lawless type of humanity, to the great danger of the public peace, morals and good health of said county and town, which would become, if allowed, a great public nuisance and destroy the peace, morals and good health of the community and lead to riot, blood-shed and the dissemination of contagious and infectious diseases. That the county and town were then enjoying peace, health and good order, and unless the threatened action of defendants was restrained it would result in the loss of human life, and untold expenses to the tax-payers on account of the violation of the criminal laws, and that these calamities should be prevented by the power of the law. The complaint prays for a temporary restraining order until a hearing of the case could be had. The circumstances as set forth in the bill were of an alarming and

threatening character, to the peace, good order, health and quiet of the community. The miners who had previously been engaged in the mines of defendant coal company were on a strike; and they and the coal company and its employees were arrayed in hostility to each other; and a high state of excitement and hot blood prevailed. In this critical state of affairs it is alleged that the defendants were about to bring into the community an element which would precipitate conflict and blood-shed; to-wit: A large number of armed men of the low and lawless type of humanity.

The statements contained in the bill of complaint show that the community referred to was quiet and peaceable, but threatened with a bloody conflict between the opposing forces and the acts threatened by the defendants would inevitably produce an armed conflict resulting in blood-shed and destruction of property. The purpose of the bill was to prevent this, and the remedy invoked was intended not to extend beyond the legitimate scope of an injunction; that is, to prevent the threatened danger. It was certainly not intended to permanently interfere with the defendant's legitimate exercise of their rights under the laws and Constitution of the United States, and of the State of Arkansas. We think that the defendants were unnecessarily alarmed, and their apprehension that the State intended to interfere with their rights under the Inter-State Commerce laws was unfounded. All of the arguments presented on that line by counsel are, in the language of the court below, "purely speculative." The danger was described in the complaint to be imminent to the peace and safety of

persons and property in the locality so endangered, the prevention of which was urgent; no other remedy would be adequate except an injunction. It is the remedy invoked by corporations for the protection of their property, and the preservation of the lives of their employees. If the statements contained in the complaint in this cause were well founded, it was the duty of the officers of the law to prevent the danger; and hence we insist it did state facts sufficient to constitute a cause of action.

Third—The Evidence Does Sustain the Allegations of the Bill.

The testimony of Bennett Brown, superintendent of defendant's coal company, shows that there was danger of trouble between the mine owners and the striking miners at the time of the filing of the complaint; that he wrote to the president of the company advising him not to insist upon sending in foreign labor, but did not say that it would cause riot and blood-shed, but did say that there would be trouble.

[Printed Tr., p. 30.]

And it was his opinion that unless there was a sufficient force to pretect the men from any attack that might be made upon them, that there would be trouble; that was the opinion expressed to the sheriff.

[Printed Tr., page 3].

He also testified that he had called on the sheriff for guards to protect the men in the employment of the company.

The reply to this question by the Court:

"Suppose you had shipped in two or three—we will sup-

pose one, two, or three—cars loads of miners on Monday last, what would have been the condition at Huntington and in this county, and that they were negroes?"

Answer: *"Well, I would have been very glad if I was able to say that everythtng would have been peaceable and quiet. I am rather inclined to the opinion that unless, as expressed to Sheriff Harrell, there had been a manifestation of a sufficient force to keep the peace under any circumstances, especially since I have been informed of the miners from Jenny Lind and Bonanza doing what they did, that there might have been a little fun."*

[Printed Tr., p. 35.]

The testimony of this witness shows that there was a state of "excitement and hot blood," as alleged in the complaint, and it also appears that the mine owners obtained from the Federal court an injunction against the striking miners. The testimony of this witness alone sustains the allegations of the bill of complaint, and that the court erred in dismissing the bill upon that ground.

Fourth—The Court Also Found That the Bill of Complaint Lacked Equity, and Did Not State a Cause of Action.

The testimony of the ~~plaintiff's~~ defendants witness as before stated shows that every allegation in the plaintiff's complaint is true, that is, there would have been danger of a conflict between the striking miners on the one side, and the coal company and its employees on the other, which was caused by the threatened importation by the defendants of foreign labor to work in the

mines. In this condition of things plaintiff filed her complaint against the defendants to enjoin them "from importing, hauling, or causing to be imported, hauled or brought into the circuit, or bringing, or from unloading or attempting to unload from its cars in said county any large bodies of armed or lawless persons affected by contagious diseases, that might endanger the peace, good order, or good health, of the State, or create a public nuisance in said county or circuit." To defeat this action defendants have invoked the Inter-State Commerce law and the Fourteenth Amendment to the Constitution of the United States. All that was asked in the first instance was a temporary restraining order, and instead of meeting the contention in the State Court upon the facts, defendants removed this cause to the United States Court, notwithstanding a large mass of testimony had been taken by the State Court before the filing of the petition for removal. It cannot be successfully contended that the Inter-State Commerce law, or the Fourteenth Amendment to the Constitution, authorizes anyone to introduce into any community, into a State, the class of persons described in the complaint in this cause, nor that the State Court has no power by injunction to avert the calamities which might flow from the introduction of such characters. It is not contended now, nor was it in the Court below, that the State Court, or any Court, could prevent persons coming into the State by any process except where the presence of such persons would produce conflict, riot and bloodshed, disease and disorder, "and that the danger was so imminent and threat-

ening that no other peaceable means would prevent the occurrence except injunction."

No one can examine the testimony without being convinced that disorder, riot and bloodshed between the opposing parties would have occurred, had it not been prevented by the temporary restraining order of the State Court. The testimony shows that immediately after the granting of the injunction in the State Court, an injunction was granted by the Federal court at the instance of the mine owners against the striking miners, restraining and enjoining them from destroying or attempting to destroy the property of the mine owners, or interfering with their business in any manner.

The injunction of the Federal Court was based upon the allegation that the striking miners were threatening to do them an irreparable injury, and placed the defendants (the strikers) under the control of the Federal court, subject to be prosecuted for any disobedience of the commands of the writ.

The issuance of writs of injunction by the Federal Courts, is based upon the contention that the ordinary administration of the criminal law is not adequate for the protection of the property of the plaintiff—a doctrine which, until the last few years, has had no recognition in this country. It would be a strange construction of the Constitution and laws of this great nation to hold that the property and employees of private corporations are entitled to protection by injunction, and that the State Court would be powerless to afford protection to a peaceable community threatened with riot, bloodshed and disease, as alleged in the plaintiff's com-

plaint in this cause. If the contention of the counsel for defendants, and the decision of the Court below are correct, any corporation or individual might bring within the borders of the State the class of people described in the plaintiff's complaint, and the State would be powerless to protect itself or its citizens by injunction.

Fifth: *The Court erred in overruling the motion to dismiss or remand this cause to the State Court, for causes set forth in the plaintiff's motion.*

[Printed Tr., page 67.]

The Court in its opinion held that the State of Arkansas being plaintiff and the defendants being citizens of the State of Missouri, it could acquire no jurisdiction, on the ground of diverse citizenship; but held the case altogether upon the ground that it was a civil action under the constitution and laws of the United States.

In the elaborate opinion of the Court, heretofore referred to, in order to retain its jurisdiction over this case, cites numerous decisions of this Court, to show that acts of the State legislature to permanently exclude certain classes of persons, are constitutional, but others, conflicting with the inter-state commerce clause, or the Fourteenth Amendment, are void.

We have examined all the authorities cited by the Court below, in fact, had cited a large number of them in our argument before the Court. We admit that there is no plainer proposition than that the jurisdiction in this case depends upon whether the suit is a civil action for the enforcement of a right arising under the Constitution and laws of the United States

or treaties thereof made under their authority, or arising under the Constitution, laws and treaties aforesaid. The cause was retained on the ground that upon the face of the complaint it showed such to be the case. The Court so decided; that is, the court decided that on the face of the plaintiff's complaint it appears that a construction of the Inter-State Commerce clause, and of the Fourteenth amendment to the Constitution are both involved, "and that the correct determination of the cause makes it necessary to construe this provision of the Constitution of the United States, and that the construction placed upon them must necessarily settle the controversy. This conclusion determines the fate of the motion (to remand). It is overruled." The judgment of the court is illogical and erroneous in holding that the bill lacks equity, and does not state a cause of action, and at the same time that it states a cause in which the construction of the Inter-State Commerce clause, and of the Fourteenth amendment, are both involved It could not assert a right under the Constitution and laws of the United States, and the treaties thereof, unless it did state *a cause of action.* The judgment of theCourt below may be correct, but its reasoning is not. The Court, after much research into the authorities, and a close and critical annalysis of the complaint and its statements and style, did refuse to dismiss or remand this cause to the State Court; because it did contain a statement of facts which "constituted an action within the Court's jurisdiction; a correct determination of which made it necessary "to construe the Fourteenth Amendment to the Constitution of the United States, and the inter-state commerce laws."

On pages 107-108, of the printed transcript, the Court criticized the plaintiff's complaint with something like severity, hence it must be assumed that the learned Judge did not inadvertently adjudge that the "bill lacked equity, and did not state a cause of action". The Court, on page 117, printed Tr., announced, "from the conclusion arrived at by the Court it is obvious that the injunction in this cause must be dissolved; no amount of proof that may be offered could possibly change the result already reached". On page 116, printed transcript, the Court held that "inasmuch as the State had passed no statute prohibiting admission of the class of people described in the complaint, that *the Company had a right under the Fourteenth Amendment and under the commerce clause of the Constitution, to introduce or import that class of persons, notwithstanding their presence might result in the loss of human life; become a public nuisance; destroy the peace, morals and good health of the county and town, and lead to riot, bloodshed and the dissemination of contagious and infectious diseases*". On page 116 printed transcript he states: "In the opinion of the Court, it is not within the power of any Court, State or Federal, to prescribe what rules and regulations are needful to the welfare, peace, health, safety and morals of the State, or to determine without legislation what class or classes of persons may lawfully come thereto".

Justice Grier, in the Passenger cases, 7th Howard, U. S, 462, quoted by the Court below, 109-110 printed transcript, says: "The right of a State to exclude *convicts, lepers, and persons affected with incurable diseases, paupers idiots, lunatics*

*and others * * * has its foundation in the sacred law of self-defense, which no law of Congress could restrain or annul."*

It is true that the question before the Supreme Court in that case was the constitutionality of an Act of the Legislature of New York to exclude the class of people above referred to.

We think there is a wide difference between the acts of a legislature to permanently exclude certain persons, and prohibiting them from coming into the State, and the action of a Court by injunction to avert a threatened and imminent calamity to the citizens; and thereby stay the commission of the threatened act until the question could be thoroughly investigated. No one could doubt, (unless it be the court below), that it was not only a right, but a duty of the court and the officials of the county, to take all lawful precautionary measures to preserve the peace, morals and safety of the people. We think it cannot be successfully demonstrated that such action would be a violation of the Fourteenth Amendment, or the Inter-State Commerce law, or that the Government of the United States intended such a construction should be put upon them. The foundation of the rights of the State Court to act as it did in this cause is, in the language of this Court, "The sacred law of self-defense, which no power granted to Congress can restrain or annul." The authorities cited by the court below upon this subject refer exclusively to acts of the legislature, intending permanently to exclude persons and property from the limits of a state.

The Court below holds that until the Legislature shall pass a law, under the authority of the Police power, any individual or corporation may import into the State "large numbers of armed men of the low and lawless type of humanity, to the great danger of the public peace; to become a great public nuisance, and destroy the peace, morals and good health, and to cause riot and bloodshed and the dissemination of contagious and infectious diseases."

He says: "No statute of this State condemns the coming of such men hither. No expression of the Legislative will relating to that class of men coming into this State has found a place in onr laws. They are silent on that subject." * *

It is enough now to say that under the Fourteenth Amendment and the commerce clause of the Constitution, they now have that right.".

It is to be sincerely hoped that the Court below will always enjoy a monopoly of such opinions.

THE COURT ERRED IN DISSOLVING THE INJUNCTION ISSUED BY THE STATE COURT.

We contend and have shown that the bill did state facts constituting a cause of action, which was sustained by the evidence; and we now proceed to show that the statements in the complaint did not contain a federal question.

The counsel and the Court treated the case as one arising under the police powers of the State. That power belongs to the legislature of the State, "and must be exercised within Constitutional bounds." There was no such question presented.

The jurisdiction of the Court to issue an injunction or temporary restraining order upon the facts stated in the complaint does not depend upon legislation, either State or National.

As before stated, the allegations presented showing the existence of a "*high state of excitement and hot blood*," which the acts threatened by the defendants, (if not prevented), *would lead to riot, bloodshed, etc.*" The danger was urgent, too urgent to wait for convening of the legislature to exercise the police power of the State;—even too urgent to be suppressed by the State troops. The remedy adopted, and which proved effectual, was the exercise of "sacred law of self-defense, which no power granted to Congress can restrain or annul"; a right recognized and proclaimed in this Court in the Passenger cases.

7th Howard, 462.

The facts alleged in the bill of complaint did not state a case arising under the constitution and laws or the United States, and as the State of Arkansas was a party it should have been remanded to the State Court. And in support of this point we call the attention of this Court to the able opinion of the Judge of the State Court, (Hon. S. T. Rowe) on pages 14-15-16, Printed Transcript.

The Court below, we think, erred in taking jurisdiction at all, and if we are right in this, it follows that the case should be reversed, with iustructions to remand to the State Court.

The learned judge of that Court below, usually so calm and deliberate, mistook the character of the case, and allowed his imagination to mislead him.

Tested by the rules laid down by this Court in the following cases it is clear that there was no federal question presented in the bill, and as the State of Arkansas was a party, the Court below erred in taking jurisdiction.

"The record must show all the facts essential to give the Court jurisdiction, else the court has no authority to assume jurisdiction."

Todd v. Cleveland & Mahoney Valley Railway Co., U. S. Appeals, 707.

"Under the Act of March 3rd, 1887; c. 373, and August 13, 1888, c. 866, a case not depending upon the citizenship of the parties, nor otherwise especially provided for, cannot be removed from a State Court into the Circuit Court of the United States, as one arising under the Constitution of the United States, unless the fact appears by the plaintiff's statement of his own claim.

Chappell v. Waterworth, 155 U. S., 102.

MUST APPEAR IN CLAIM: Under the Acts of March 3, 1887, c. 373, and August 13, 1888, c. 866, a case not depending on the citizenship of the parties nor otherwise specially provided for, cannot be removed from a State Court into the Circuit Court, as one arising under the constitution, laws or treaties of the United States, unless that appears by the plaintiff's statement of his own claim. The statement of that fact in the petition for removal, or in a subsequent pleading, is not sufficient.

Postal Telegraph Cable Co. vs. U. S., 155, U. S., 482.

GROUNDS MUST APPEAR IN CLAIM: "The fact that a case arises under the Constitution of the United States must appear from the plaintiff's statement of his own claim; and if it does not so appear, the want cannot be supplied by any statement in the petition for removal, or in subsequent pleadings."

East Lahe Land Co. v. Brown, 155 U. S., 488.

"On an application for removal from a State to a Federal Court, the Federal question, or the Federal character of a defendant company, must appear from the complaint in the action in order to justify a removal.

Ogden Short Line & Utah N. Ry. v. Skottowe, 162 U. S., 490.

"This action, although brought upon the relation of Jo Johnson, as Prosecuting Attorney for the 12th Judicial Circuit, is really a suit brought by the State, and therefore not removable on the ground of citizenship under the Act of March 3, 1887, or August 13, 1888."

Ferguson Shoe Inspection v. Ross et al., 38, Fed. 161.

"A suit instituted by the State in one of its own Courts against a citizen of another State is not removable on the ground of diverse citizenship of the parties.

Alabama v. Wolffe, 18, Fed. 836.

Germania Insurance Co. v. Wisconsin, 119 U. S., 473.

Starin v. New York, 115 U. S., 248.

Ames v. Kansas, 111 U. S., 449.

And numerous other dcisions of the Supreme Court of the United States establishing the same doctrine.

"Therefore, a suit by the State in one of its own Courts cannot be removed to the Federal Courts under the Acts of 1875, 1887 and 1888, unless it arises under the constitution or laws of the United States. To give jurisdiction to a United States Circuit Court of the case by removal from a State under Act of 1875 the construction of the constitution or a law or treaty of the United States must be directly involved in it."

Parsons v. Dunham, 121 U. S, 421.

Starin v. New York, et supra.

We respectfully insist that the Court below erred—and its judgment should be reversed with instructions to remand.

This case involves questions of supreme moment to the people of the States, and we invoke the careful consideration of this high Court, to the end that no doubt may hereafter arise.

BEN T. DuVAL,

Of Counsel for Appellant.